Supreme Court, U. S.
FILED
FEB 21 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-732

THE PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

vs.

ROBIN HAMPTON,

Respondent.

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN

WILLIAM L. CAHALAN
Prosecuting Attorney
Wayne County
State of Michigan

EDWARD REILLY WILSON
Chief Appellate Attorney

MAURA D. CORRIGAN (P-23557)
Assistant Prosecuting Attorney
12th Floor, 1441 St. Antoine
Detroit, Michigan 48226
Phone: (313) 224-5774

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United States Supreme Court Rule 24(5) 1

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STATEMENT OF FACTS

Now Comes William L. Cahalan, Prosecuting Attorney in and for the County of Wayne, by Edward Reilly Wilson, Chief Appellate Attorney, and Maura D. Corrigan, Assistant Prosecuting Attorney, pursuant to U.S. Supreme Court Rule 24(5), and respectfully notes intervening factual matter unknown at the time of the filing of the petition for a writ of certiorari which may be material to a consideration of the question presented.

1. Prior to the filing of the petition, on October 31, 1977, an assistant prosecuting attorney who was unaware of the preparation and proposed filing of the petition for a writ of certiorari did move to enter an order of nolle prosequi. A trial judge not assigned to the case granted his motion.

2. Petitioner herein was apprised of the aforesaid action by defense counsel on approximately February 2, 1978 and immediately moved the trial court to set aside the order of nolle prosequi which had been mistakenly entered. (Appendix A)

3. On February 10, 1978, the trial court granted the aforesaid motion, which renders the question presented fully ripe for review.

CONCLUSION

It is respectfully submitted, for the reasons set forth above, that the question presented is not moot but rather is fully ripe for appellate review.

Respectfully submitted,

WILLIAM L. CAHALAN
Prosecuting Attorney
Wayne County
State of Michigan

EDWARD REILLY WILSON
Chief Appellate Attorney

Maura D. Corrigan

MAURA D. CORRIGAN (P-23557)
Assistant Prosecutung Attorney
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Phone: (313) 224-5774

MDC:do

Dated: February 14, 1978.

FILE WITH ASSIGNMENT CLERK ONLY

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PRAECIPE FOR MOTION AND ORDER/JUDGMENT

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff - Appellant

THE CIRCUIT COURT FOR THE COUNTY OF WAYNE STATE OF MICHIGAN

v.

Civil Action No. 74-038-495 FA

ROBIN HAMPTON, Defendant - Appellee

Criminal No.

TO THE ASSIGNMENT CLERK: Please place Plaintiff's/Defendant's (strike one) Motion for (state nature of Motion in brief form)

MOTION TO SET ASIDE ORDER OF NOLLE PROSEQUI AND REINSTATE

PROCEEDINGS ANTE.

On the motion calendar for (date) Friday, February 10, 1978, at 2:15

This motion is to be heard by JUDGE THEODORE R. BOHN

TO COURT CLERK: Have the following Order/Judgment completed and signed by Judge and check 1 or 2 below, whichever is applicable.

ORDER/JUDGMENT

Dated: February 3, , 19 78

☐ 1. IT IS HEREBY ORDERED THAT the aforesaid motion be and the same is hereby DENIED.

☒ 2. IT IS HEREBY ORDERED THAT the aforesaid motion be and the same is hereby GRANTED, and it is FURTHER ORDERED AND ADJUDGED

BY Flanagan

THOMAS J. FOLEY

Circuit Judge

FEB 10 1978

APPROVED AS TO FORM AND SUBSTANCE BY COUNSEL FOR:

PLAINTIFF

DEFENDANT

Dated:

EDWARD REILLY WILSON (P-22400)
Plaintiff's Attorney
Telephone No. 224-5792

RAYMOND E. WILLIS (P-22379)
Defendant's Attorney
Telephone No. 961-4445

(List additional attorneys on other side)

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v No. 74-038-495 FA

ROBIN HAMPTON,

Defendant-Appellee.

U.S. Supreme Court No. 77-732
Michigan Supreme Court No. 59635
Michigan Court of Appeals No. 26847

WILLIAM L. CAHALAN
Prosecuting Attorney

EDWARD REILLY WILSON (P-22400)
Principal Attorney, Appeals
12th Floor, 1441 St. Antoine
Detroit, Michigan 48226
Phone: 224-5792

RAYMOND E. WILLIS (P-22379)
Attorney for Defendant Robin Hampton
3400 David Stott Building
Detroit, Michigan 48226
Phone: 961-4445

MOTION TO SET ASIDE

ORDER OF NOLLE PROSEQUI

AND REINSTATE PROCEEDINGS ANTE

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v No. 74-038-495 FA

ROBIN HAMPTON,

Defendant-Appellee.

U.S. Supreme Court No. 77-732
Michigan Supreme Court No. 59635
Michigan Court of Appeals No. 26847

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Prosecuting Attorney

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MOTION TO SET ASIDE

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v No. 74-038-495 FA

ROBIN HAMPTON,

Defendant-Appellee.

U.S. Supreme Court No. 77-732
Michigan Supreme Court No. 59635
Michigan Court of Appeals No. 26847

NOTICE OF HEARING

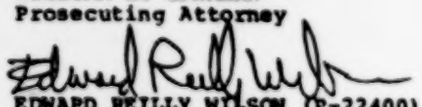
To: Raymond E. Willis
Attorney-at-Law
3400 David Stott Building
Detroit, Michigan 48226

Hon. Theodore R. Bohn
Judge of Wayne County Circuit Court
1719 City-County Building
Detroit, Michigan 48226

PLEASE TAKE NOTICE that the attached motion will be brought on for hearing in the Circuit Court for the County of Wayne, at Detroit, Michigan, on Friday, February 10, 1978, at 2:15.

Respectfully submitted,

WILLIAM L. CAHALAN
Prosecuting Attorney



EDWARD REILLY WILSON (P-22400)
Principal Attorney, Appeals
12th Floor, 1441 St. Antoine
Detroit, Michigan 48226
Phone: 224-5792

Dated: February 3, 1978
ERW:er

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v No. 74-038-495 FA

ROBIN HAMPTON,

Defendant-Appellee.

U.S. Supreme Court No. 77-732
Michigan Supreme Court No. 59635
Michigan Court of Appeals No. 26847

MOTION TO SET ASIDE

ORDER OF NOLLE PROSEQUI

AND REINSTATE PROCEEDINGS ANTE

NOW COME the People of the State of Michigan, by WILLIAM L. CAHALAN, Prosecuting Attorney for the County of Wayne, and EDWARD REILLY WILSON, Principal Attorney, Appeals, and respectfully request that the order of nolle prosequi entered in this cause on October 31, 1977 be set aside, and proceedings ante be reinstated for the following reasons:

1. The assistant prosecutor who moved to nolle prosequi this case was not aware that a petition for a writ of certiorari had been sought by the appellate section of the prosecutor's office after the Michigan Supreme Court denied the prosecutor's application for leave to appeal.

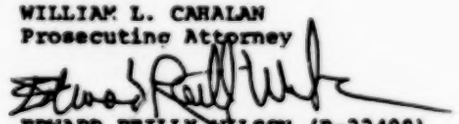
2. The United State Supreme Court has directed that defendant reply to the prosecutor's petition. (Appendix A).

3. The defendant cannot be prejudiced by reinstatement of the proceedings ante since he is serving a langthier sentence on a conviction resulting from Oakland County, and since he would be returned to a position of having his conviction reversed with ultimate determination of the retrial issue postponed pending outcome of the certiorari petition.

WHEREFORE, the movant respectfully requests that the order of nolle prosequi be set aside, pending the outcome of proceedings in the United States Supreme Court, and proceedings ante be reinstated.

Respectfully submitted,

WILLIAM L. CAHALAN
Prosecuting Attorney



EDWARD REILLY WILSON (P-22400)
Principal Attorney, Appeals
12th Floor, 1441 St. Antoine
Detroit, Michigan 48226
Phone: 224-5792

Dated: February 3, 1978
ERW:er

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v No. 74-038-495 FA

ROBIN HAMPTON,

Defendant-Appellee.

U.S. Supreme Court No. 77-732
Michigan Supreme Court No. 59635
Michigan Court of Appeals No. 26847

---/

AFFIDAVIT IN SUPPORT OF MOTION

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

EDWARD REILLY WILSON, deposes and says that he is a Principal Attorney in the Office of the Prosecuting Attorney for the County of Wayne.

Further, that affiant has read the foregoing motion as subscribed and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated to be on information and belief, and as to those matters he believes them to be true.

Edward Reilly Wilson
EDWARD REILLY WILSON

Subscribed and swotn to before me
this 3rd day of February, 1978

Stella Rosenberg
Stella Rosenberg, Notary Public
Oakland County, Mich., acting in
Wayne County, Mich.
My commission expires: 7-8-81

COPY

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

January 19, 1978

Raymond Willis, Esq.
3400 David Stott Building
Detroit, Michigan 48226

Re: MICHIGAN v. ROBIN HAMPTON
No. 77-732

Dear Mr. Willis:

On November 22, 1977, a petition for a writ of certiorari in the above-entitled case was filed in this Court to review an order of the Court of Appeals of Michigan (No. 26847), dated March 24, 1977. Our records indicate that you were served with a copy of the petition.

The Court has directed this office to request that a response be filed in this case. Forty printed copies of the response, together with proof of service thereof, should reach this office on or before February 20, 1978. On the other hand, if the respondent is a pauper you may file ten typewritten or otherwise reproduced copies of a motion for leave to proceed in forma pauperis, with affidavit in support thereof, the brief in opposition and one copy of proof of service.

Very truly yours,

Michael Rodak, Jr.
Clerk

cc: William L. Cahalan, Esq.
Prosecuting Attorney, Wayne County
1441 St. Antoine, 12th Floor
Detroit, Michigan 48226

PROSECUTOR'S OFFICE
Appellate Department
JAN 23 1978

AIR MAIL

APPENDIX "a"